

From: Bradley Campbell [bcampbell@clf.org]
Sent: 3/25/2021 8:16:04 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: tirwin@CLF.org
Subject: Merrimack issue follow-up
Attachments: smime.p7s

Further from Tom. My message failed to make clear that the Trump change was in the final permit now under appeal, and the Trump change was not subject to public comment

Begin forwarded message:

From: Tom Irwin <tirwin@clf.org>
Subject: RE: Exigent Issue / Follow-up
Date: March 25, 2021 at 3:44:45 PM EDT
To: Bradley Campbell <bcampbell@clf.org>

This is great, Brad. Many thanks. Melissa's response may be that EPA changed course on the cooling towers because of Merrimack's low capacity factor. If so, we can inform her of our pending appeal, in which we argue that regardless of the capacity factor, the permit will not support a balanced indigenous population in the affected stretch of the Merrimack (the Hooksett Pool) and that as a matter of law EPA should have conducted a public comment process when it amended the permit to no longer require cooling towers. There's much more to our petition for review which, prepared by Reed Super, is comprehensive (and complex). Also, if helpful, Reed prepared the following bullets, to be used for internal purposes, describing the sequence of events during the permitting process and where we are now:

- 2011: [Obama] EPA issues draft permit for public comment; SC, CLF and other environmental groups approve and ask EPA to move forward to finalize it.
- 2014: [Obama] EPA issues revised draft permit; same response from enviros.
- [2017 comment period is in here, but I think you can leave out; there was no new draft permit]
- 2018: Private equity company bought Station from PSNH
- 2018-2020: Company and [Trump] EPA meet frequently to discuss changes to permit; we learn through FOIA that they are meeting and exchanging "discussion drafts"; we again ask EPA to finalize the 2011/2014 permit they took public comment on, or if EPA intends to go in a radically new direction at the behest of the private equity company, we ask them to issue a new draft permit, explaining their purported rationale, for public comment; we get no response
- 2020: [Trump] EPA issues radically different FINAL permit that is much weaker than 2011/2014 drafts, without issuing a new draft for public comment; the FINAL permit

weakens intake, thermal discharge, and other requirements, and even removes standard narrative limitations on the thermal plume that the Station has been subject to since 1992 [imposed by Geo. H.W. Bush's EPA] and which EPA of many administrations has included in the permits for most riverine power plants in New Hampshire and Massachusetts for decades.

- SC and CLF appealed the permit to the EPA Environmental Appeals Board in 2020; [Trump] EPA and the private equity company filed brief defending the permit in 2020.
- After election, [Biden] EPA files motion with Board, citing Executive Order No. 13990, "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 25, 2021), which directs EPA to examine whether its past actions are consistent with improving public health and protecting our environment and to "consider suspending, revising, or rescinding" those actions that are not; Board gives EPA until April 19, 2021 to brief the incoming EPA leadership and either file a motion requesting that EPA wants to revoke or otherwise reconsider the permit, or go forward and defend the [Trump] EPA's permit.

EPA should not defend the 2020 permit; it should seek a "voluntary remand" and either go back to the 2011/2014 permit or, at a minimum, issue any changes in a draft permit for public comment.

Best,
Tom

Tom Irwin
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